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not uniform as to whether or not the burden is on the plaintiff to prove the husband's failure to provide suitably for his wife. *Thebbets* v. *Hapgood,* 34 N. H. 420; *Baker* v. *Carter,* 83 Me. 132; and *Cooper* v. *Haseltine,* 50 Ind. App. 400 take the view of the principal case that the plaintiff need not show the husband's neglect of duty to provide for his wife, and that the husband, to escape liability, must assume the burden and prove that he has made ample provision. A strong line of authorities takes an opposite view. *Raynes* v. *Bennett,* 114 Mass. 424; *Bergh* v. *Warner,* 47 Minn. 250; *Eder* v. *Grifka,* 149 Wis. 606.

NEGLIGENCE—VIOLATION OF STATUTE AS NEGLIGENCE PER SE.—Oregon Laws of 1909, p. 103 provides "that no person, firm, or corporation shall employ or allow any person under the age of eighteen years to run, operate, or have charge of any elevator used for the purpose of carrying either persons or property." Plaintiff's intestate, a boy of 17 years, was in the employ of defendant company, and was permitted to run an elevator, situated in defendant company's place of business. When operating the said elevator on one occasion, the plaintiff's intestate was caught between the elevator and shaft and crushed to death, and an action was brought by his administrator. *Held,* that the violation of the statute constituted negligence per se. *Beaver* v. *Mason, Ehrman & Co.* (Ore. 1914), 143 Pac. 1000.

The cases are not in accord as to the effect of such statutes upon the rights of private persons affected thereby. Many cases hold with the principal case that—although the act itself is of such a nature that it would not necessarily be negligent, and aside from any consideration of prudence and skill—the fact that it is in violation of a statute or ordinance directly prescribing what shall or shall not be done, makes the act negligent per se, and entitles an innocent person injured by the illegal acts to a civil remedy therefor. *Chicago etc. Ry. Co.* v. *Pitchford* (Okla. 1914), 143 Pac. 1146; *Tobey* v. *Burlington, etc. Ry. Co.,* 94 Ia. 256; *Jetter* v. *New York etc. Ry. Co.,* 2 Abb. Dec. 458; *Indiana, etc. Ry. Co.* v. *Barnhart,* 115 Ind. 399; *Tex. & Pac. Ry. Co.* v. *Brown,* 11 Tex. Civ. App. 503; *Peterson* v. *Standard Oil Co.,* 55 Ore. 522; *Sterling* v. *Union Carbide Co.,* 142 Mich. 284; *Platt* v. *Southern Photo Material Co.,* 4 Ga. App. 159. According to another class of cases, the violation of a statute or ordinance of this kind is not negligence per se, but only "some evidence of negligence," to be given to the jury together with all other evidence on the question of negligence. *Rainey* v. *N. Y. C. etc. Ry. Co.,* 68 Hun. 445; *Knuffle* v. *Knickerbocker Ice Co.,* 84 N. Y. 488; *McRickard* v. *Flint,* 114 N. Y. 222; *Connor* v. *Electric Traction Co.,* 173 Pa. St. 602. Most of the cases belonging to this class go so far as to say that although not conclusive upon the subject of negligence (thus distinguishing them from the first class discussed) proof of the violation of such a statute or ordinance is sufficient to establish a prima facie case, which, however, may be rebutted by proof of other facts or circumstances. See *McRickard* v. *Flint,* supra; *Jupiter Coal Min. Co.* v. *Mercer,* 85 Ill. App. 96. But in order that such violation be either prima facie negligence or negligence per se, the duty prescribed by the statute must

be due not only to the city as a municipal body, but to the public, considered as composed of individuals. *Heeney* v. *Sprague,* 11 R. I. 456; *City of Hartford* v. *Talcott,* 48 Conn. 525.

PARENT AND CHILD—CUSTODY OF MINOR CHILD.—Plaintiff was the mother of an illegitimate child, and, not being able to care for it at the time of its birth, gave its custody to a Mrs. Pearse. During Mrs. Pearse's last illness, defendant, her sister, cared for the child, and after Mrs. Pearse's death, defendant took the child into her own custody. Mr. Pearse, shortly afterwards, secured from the plaintiff a document giving him the custody of the child, and the lower court found as a fact that plaintiff intended to give the child to him if she obtained its custody. All three parties are in comfortable circumstances financially and they are all fit persons for the custody of the child. *Held,* the child should be left with defendant and not given to the mother, who had twice shown her willingness to give up her right to the child. *Broxholm* v. *Parks* (Colo. 1914), 141 Pac. 994.

The case illustrates the extent to which courts will go in overriding a parent's bare legal right to the custody of his child, in looking out for the best interest of the child. As the child was illegitimate, the mother had the legal right to its custody. And if the court had not found that plaintiff's sole object was to turn the child's custody over to Mr. Pearse, she ought to have been entitled to recover its custody. While in a case of this kind, the best interest of the child is the paramount consideration, the parent's right to custody of the child cannot be lightly ignored. To refuse the custody of a child to its parent, it must usually be shown that the parent is unfit, by reason of improper morals or habits, and that the child would be actually endangered in its life, health, moral or permanent happiness. The parent, if of good moral character and able to support the child in his own style of life, cannot be deprived of the custody of his children. *Hernandez* v. *Thomas,* 50 Fla. 522, 2 L. R. A. (N. S.) 203; *Stapleton* v. *Poynter,* 111 Ky. 264, 53 L. R. A. 784; *Titus* v. *McGlosky,* 67 N. J. Eq. 709; *In re Neff,* 20 Wash. 652. But since the court took the view that the question of the custody of the child was really between Mr. Pearse and the defendant, the only consideration to guide the court was the best interest of the child.

SALES—IMPLIED WARRANTY NOT EXCLUDED BY EXPRESS WARRANTY.—Defendant sold plaintiff an auto truck. In the bill of sale there was an express warranty that the machine was well made and of good material. Then followed the provision, "This express warranty excludes all implied warranties." The machine was not fit for the purpose for which it was bought. Plaintiff brought suit in equity to rescind the contract, and recover the purchase price. Defendant pleaded that the express warranty excluded all implied warranties. *Held,* that the implied warranty of fitness was not excluded by the express warranty, *International Harvester Co. of America* v. *Bean,* (Ky. 1914), 169 S. W. 548.

An express warranty will exclude an implied warranty on the same or closely related subjects. *Thomas* v. *Thomas,* 146 Ala. 533; *Nave* v. *Gross,* 146 Ill. App. 104; *Sullivan Machinery Co.* v. *Breeden,* 40 Ind. App. 631; *Guhy* v. *Nichols & S. Co.,* 33 Ky. L. Rep. 237. But an express warranty does not